

MF 03-5

Tax Type: Motor Fuel Use Tax

Issue: Failure to Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE d/b/a
JOHN'S TRUCKING, INC.
Taxpayer**

Docket # 02-ST-0000

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The Illinois Department of Revenue (hereinafter referred to as the "Department") issued a Notice of Tax Liability (hereinafter referred to as the "NTL") to John Doe d/b/a John's Trucking for motor fuel use tax. The NTL alleges that the taxpayer was found operating a commercial motor vehicle on the highways of the State of Illinois without a valid motor fuel tax license and decal. Taxpayer timely protested the NTL. The parties requested that the matter be heard on the stipulations and addenda to stipulations presented. After a thorough review of the facts and law presented it is my recommendation that the penalty be dismissed. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. On April 26, 2002, the taxpayer operated a commercial motor vehicle on the highways of the State of Illinois. At that time, John Doe's vehicle was under a lease contract to ABC, Inc. of Anywhere, Michigan. (Stip. # 1)

2. On the same date of April 26, 2002, taxpayer stopped at the Scales weigh station on I-75 in McLean County, Illinois where he was weighed and was asked to produce the IFTA¹ license required for travel within the State (Stip # 2)

3. Since the taxpayer was operating on a lease arrangement with ABC, Inc., he was required to produce only a photocopy of the 2002 IFTA license purchased by ABC, but he was unable to produce it at that time. He was fined \$75.00 as the operator and was required to purchase a single trip license. He paid the fine and \$20.00 for the single trip permit. (Stip. No. 3; Addendum to Stipulations Nos. 2, 3)

4. The officer "details" in the citation state:

Truck tractor came through I-75 W/B Scales. Truck had no 2002 IFTA decal on right side but had 2002 decal on left side. Driver did not have valid 2002 IFTA license. Citation and STP issued. (Addendum to Stipulations No. 4)

5. John Doe was later assessed a penalty of \$1,000.00 by the Illinois Department of Revenue, but ABC, Inc., the lease contractor has been found to be the party responsible for purchase of the IFTA license. (Stip. No. 4)

6. ABC has produced a photocopy of its IFTA license for 2002. ABC, Inc. had the license at the time John Doe was stopped, even though Doe was unable to produce it at the time the citation was issued. The license had been purchased prior to the time John Doe was stopped and cited. (Stip. No. 5)

¹ International Fuel Tax Agreement.

7. John Doe, operator of unit number XXXX, signed for IFTA decal No. XXXXX on December 31, 2001. (Addendum to Stipulations p. 7)

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (hereinafter referred to as the “Act”) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 ILCS 505/13a.4)

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5) A “motor carrier” is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17) There is no issue here that an IFTA license and decals were necessary for the vehicle Doe was operating.

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle and external motor fuel tax decals shall be displayed. That section states, in pertinent part:

13a.4. * * * After January 1, 1986, motor fuel use tax licenses shall be carried in the cab of each commercial motor vehicle operating in Illinois.

The Department shall, by regulation, provide for the use of reproductions of original motor fuel use tax licenses in lieu of issuing multiple original motor fuel use tax licenses to licensees.

On and after January 1, 1985, external motor fuel tax decals shall be conspicuously displayed on the passenger side of each commercial motor vehicle propelled by motor fuel operating in Illinois, except busses,

which may display such devices on the driver's side of the vehicle. Beginning with the effective date of this amendatory Act of 1993 or the membership of the State of Illinois in the International Fuel Tax Agreement, whichever is later, the decals issued to the licensee shall be placed on both exterior sides of the cab. (35 ILCS 505/13a.4, see also 625 ILCS 5/11-1419.03)

Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. 35 ILCS 505/13a.6(b) states:

(b) If a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displaying decals required by Section 13a.4 or without a valid single trip permit when required by Section 13a.5 of this Act or a valid 30-day International Fuel Tax Agreement temporary permit, the person required to obtain a license or permit under Section 13a.4 or 13a.5 of this Law must pay a minimum of \$1,000 as a penalty. For each subsequent occurrence, the person must pay a minimum of \$2,000 as a penalty. * * *

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

ABC has established and the Department agrees that the IFTA license was purchased at the time John Doe was stopped and cited for not being able to produce his photocopy of it. (Stip. No. 4) However, the Department states that because John Doe could not show Illinois

authorities that photocopy of the license on April 26, 2002, that the penalty must be upheld. The Department relies upon the fact that “[T]here is no provision in the statute for showing at a later date that a photocopy of the purchased license was available and could have been in the cab of the truck on the date it was requested.” (Department’s Brief No. 4)

The Department is correct that there is no such provision in the statutes. Taxing statutes are to be strictly construed, and their language is not to be extended or enlarged by implication beyond its clear import; but in cases of doubt, such laws are construed most strongly against the government and in favor of the taxpayer. Ingersoll Mill. Mach. Co. v. Department of Revenue, 405 Ill. 367 (1950)

ABC, Inc., as the lease contractor, admits he is the responsible party for the purchase of the IFTA license for 2002. The Department incorrectly issued the penalty to the taxpayer. The officer that issued the citation noted that the IFTA decal was on John Doe’s leased truck on the left side. ABC, Inc., has produced sufficient evidence, established by books and records, to show that the decals and license were purchased prior to the citation and that John Doe received them.

The Act requires the taxpayer to secure a motor fuel use tax license and decals. The \$1,000 penalty provision requires that the operator (or in this case the lessor) obtain the license prior to operating a commercial motor vehicle in Illinois, and properly display decals. ABC obtained the license. Doe properly displayed one of the decals, but not the other. The Act states that the failure obtain the license and properly display the decals requires the imposition of the penalty. ABC did have an International Fuel Tax Agreement license on the day its employee was operating the truck in Illinois, even though Doe was unable to produce his photocopy of it for the officer. One of the decals was on display, but the other was not as required by 35 ILCS

505/13a.6(b). The imposition of the statutory \$1,000 penalty is not for improperly displaying one of the necessary decals.

For the foregoing reasons, it is recommended that the \$1,000.00 penalty at issue be dismissed.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: April 16, 2003